

*Arizona Supreme Court*  
*Judicial Ethics Advisory Committee*

**OPINION 18-04**  
(Issued August 6, 2018)

**PUBLICIZING CAMPAIGN ENDORSEMENTS BY CONSTABLES**

**ISSUE**

May a judicial candidate publicize an endorsement by a constable?

**ANSWER**

Yes, though recusal or remittal of disqualification may be necessary in subsequent judicial proceedings involving the constable.

**DISCUSSION**

**I. Applicable Code Provisions**

Several provisions of the Arizona Code of Judicial Conduct (“Code”) are relevant to this inquiry, including:

**Rule 4.1. Political and Campaign Activities of Judges and Judicial Candidates in General**

(A) A judge or judicial candidate shall not do any of the following:

. . . .

(3) publicly endorse or oppose another candidate for any public office

**Rule 4.2. Political and Campaign Activities of Judicial Candidates**

(A) A judicial candidate shall:

- (1) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary;
- (2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations;
- (3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and
- (4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities other than those described in Rule 4.4 that the candidate is prohibited from doing by Rule 4.1

## II. Analysis

The Code makes clear that judicial campaigns are different from campaigns for public office in the legislative and executive branches of government:

Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure.

Code, Rule 4.1, cmt 1. *See also Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656 (2015) (“Judges are not politicians, even when they come to the bench by way of the ballot. And a State’s decision to elect its judiciary does not compel it to treat judicial candidates like campaigners for political office.”).

Judges and judicial candidates cannot publicly endorse or oppose other candidates for public office.<sup>1</sup> Rule 4.1(A)(3). It is thus clear that judges and judicial candidates may not publicly endorse constable candidates. But is the converse necessarily true?

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<sup>1</sup> The Code does not prohibit judicial candidates from “campaigning on their own behalf or opposing candidates for the same judicial office for which they are running.” Rule 4.1, cmt 4. Nor does the Code prevent a judge or judicial candidate “from privately

The Code imposes “rules of reason” that must be interpreted with “due regard for all relevant circumstances.” As the discussion *infra* reflects, certain endorsements are impermissible because they call into question a judicial candidate’s impartiality and independence. But the prohibitions in Canon 4 of the Code should not be extended more broadly than necessary. See Rule 4.1, cmt 12 (“The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.”).

This committee has previously opined that judicial candidates may not publicize endorsements from law enforcement officials. See Advisory Opinion 96-12 (Endorsement of a Judicial Candidate by a Law Enforcement Official). Advisory Opinion 96-12 was based on a prior version of the Code, but its conclusion remains viable under the current Code. Relevant excerpts from that opinion include:

- “[A] judicial candidate should avoid any statement or implication that the candidate is the hand-picked candidate of the endorsing group or official.”
- “[T]he candidate must not employ endorsements which portray the judge as a ‘law enforcement’ candidate.”
- “Emphasizing support from a single source, such as a prominent law enforcement official, might reasonably be seen as indicating that the candidate is pro police or pro prosecution. That view is antithetical to the role of a judge.”

Although Advisory Opinion 96-12 is instructive regarding the pending inquiry, it is not dispositive. The committee perceives relevant distinctions between constables and law enforcement officials who initiate charges or regularly testify in court proceedings.

Constables’ powers and duties are statutorily defined as follows:

Constables shall attend the courts of justices of the peace within their precincts when required, and within their counties shall execute, serve and return all processes, warrants and notices directed or delivered to them by a justice of the peace of the county or by competent authority.

A.R.S. § 22-131(A). Constables have “the authority of a peace officer only in the performance of the constable’s official duties.” A.R.S. § 22-131(E).

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expressing his or her views on judicial candidates or other candidates for public office.” Rule 4.1, cmt 5.

The legislatively established Constable Ethics Standards and Training Board, *see* A.R.S. § 22-137, more fully explains a constable's duties:

While constables are certified by the same board that certifies training for police and sheriffs, they do not perform many of the more traditional law enforcement duties that police and sheriffs do, such as traffic enforcement or criminal investigations.

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The primary duties of Arizona constables are:

- Executing and returning writs of possession or restitution (evictions);
- Serving orders of protection or orders prohibiting harassment;
- Serving civil and criminal summons and subpoenas;
- Providing judicial security to the justice courts;
- Levying and returning writs of execution (seizing property to satisfy judgments);
- Storing personal property that has been levied; and
- Conducting constable sales of levied property (like sheriff's sales)

<https://cestb.az.gov/about-us/what-constables-do> (last visited July 19, 2018).

Although constables occasionally testify in court about service-related issues or about execution of their other duties, they do not routinely do so. More fundamentally, constables do not initiate judicial proceedings via citations or other charging documents, and they rarely testify on behalf of a particular party. As such, the concerns this committee articulated in Advisory Opinion 96-12 carry significantly less force in this context. Nevertheless, a judicial candidate wishing to publicize a constable's endorsement must be careful not to portray that endorsement as one from law enforcement and should not, for example, display the constable's badge in campaign-related materials, on websites, or using social media.

Rather than prohibiting the publication of constable endorsements entirely, the committee concludes that concerns about judicial independence and impartiality can, in most cases, be satisfied by adherence to the disqualification and disclosure principles set forth in Rule 2.11. If a judge has been previously endorsed by a constable, and that constable appears as a witness before the judge in a contested proceeding, the judge must

consider whether recusal under Rule 2.11(A) is necessary or whether the remittal of disqualification procedure set forth in Rule 2.11(C) is appropriate.

Advisory Opinion 92-17 (Co-Sponsoring Professional Associations with Law Enforcement Officials) does not compel a contrary conclusion. That opinion concluded it was improper for justices of the peace and constables to maintain a joint professional association -- the Arizona Justice of the Peace and Constable Association -- that engaged in lobbying activities and educational programs. The committee opined that, “[t]here is at least an appearance that the prestige of a judge’s office may be used to advance the private interests of others and that others might convey the impression they are in a special position to influence judges who are members of the association.”

Assuming, without deciding, the continued validity of Advisory Opinion 92-17 under the current Code, the committee must be mindful of the constitutional protections afforded political speech. *See, e.g., Republican Party of Minn. v. White*, 536 U.S. 765, 774 (2002) (invalidating Minnesota canon of judicial conduct aimed at preserving judicial “neutrality” by restricting judicial candidates’ speech, holding that statements about the qualifications of candidates for public office are a category of speech “at the core of our First Amendment freedoms.”). Constables will frequently possess relevant first-hand knowledge about a judicial candidate’s qualifications and competence. As discussed *supra*, legitimate concerns about judicial independence and impartiality can be satisfied through means less restrictive than an outright ban on publicizing constable endorsements.